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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,331	09/26/2006	Bernardus H.W. Hendriks	GB 040074	7029
24737 7590 05/27/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			EXAMINER LESTER, EVELYN A	
			ART UNIT 2873	PAPER NUMBER
			MAIL DATE 05/27/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/599,331	HENDRIKS ET AL.	
	Examiner	Art Unit	
	Evelyn A. Lester	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10-10-07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on 6-15-08. These drawings are approved.

Claim Rejections - 35 USC § 112

3. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: All elements making up the apparatus. Claim 15 currently claims something by what it is, or what it does, i.e. a mobile phone, without including any structure or without including any elements whatsoever.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 15, as far as it is understood, is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ferrari et al (U.S. Patent 3,476,886).

Please also note: Rydbeck (U.S. Patent 5,384,844); Jeong et al (U.S. Patent 6,256,481 B1); and Saari et al (U.S. Patent 6,532,035 B1) as further examples of “mobile phones.”

Ferrari et al disclose the claimed invention as shown in Figure 2, which clearly shows a hand-held apparatus which is a mobile phone.

6. Claims 1-14 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Ticknor et al (WO 02/069016 A2)***.

*** Please note that the US equivalent document, Ticknor (U.S. Patent 7,016, 560 B2), was used to apply the prior art for this rejection, as the copy of the European patent publication provided by the Applicant was incomplete as filed. A complete copy was attempted to be located, but to no avail.

Ticknor disclose the claimed invention of a variable lens comprising a substantial cylindrical fluid chamber (note for example, Fig. 50) including a first, electrically

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conductive, fluid (5004) and a second, non-conductive, fluid (5006), the fluids being non-miscible, in contact with each other and having different indices of refraction, and an electrode configuration comprising a first electrode in contact with the first fluid (note for example, Fig. 10A) and second electrode means (cf. Fig. 4) arranged at the chamber wall, characterized in that a volume of one of the fluids (5004) is arranged between two volumes of the other fluid (5006), in that the second electrode means comprises at least two sub-electrodes (note for example, Fig. 4) each covering, in the direction of the cylinder axis, different portions of the cylinder wall and in that the chamber wall is provided with two openings at its opposite ends which openings at its opposite ends, which openings are interconnected by means of an external fluid guide (note for example Fig. 45A; and col. 32, line 45 and lines 59-66) to circulate one of the fluids in and out the chamber.

With respect to claims 2 and 3, please note for example Fig. 4, column 19, lines 17-19 and col. 16, lines 6-12.

With respect to claims 4 and 5, please note for example Figs. 27 and 50.

With respect to claims 6 and 7, please note for example Fig. 4.

With respect to claim 8, please note the Abstract for example, as well as col. 14, lines 41-44.

With respect to claim 9, please note for example col. 10, lines 55-67; Table I at cols. 11 and 12, wherein "glycerol" is listed; also note col. 15, lines 55-67.

With respect to claims 10-14 and 16-18, these claims are considered to be "use" claims, wherein how an apparatus is employed does not patentably differentiate is from the prior art.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evelyn A. Lester whose telephone number is (571) 272-2332. The examiner can normally be reached on M-F, subject to an increased flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Evelyn A. Lester/
Primary Examiner, Art Unit 2873